

FILED

Jones v. Calpine Corp, No. 04-35484

MAR 22 2006

CUDAHY, Circuit Judge for the Seventh Circuit, sitting by designation,
dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

The contract between Calpine and the Joneses created a blatantly obvious and huge financial incentive for Calpine to hinder or preclude timely completion of the power plant. From this, it is not difficult to infer that the risk that Calpine would not cooperate with the Joneses was assigned to the Joneses. A contrary conclusion perversely rewards the omission of obvious terms from express inclusion in contracts.

I, therefore, respectfully dissent and would affirm.